No. 89-1742

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1989

CLEVELAND CHRISTMAS,

Petitioner,

vs.

JOSEPH MARSON, DOUGLAS BAKER, CHARLES MURPHY, ROBERT ADAIR, SANDRA GREENBERG, KENNEDY SHAW, JACK DRAKEFORD AND THE CITY OF ENGLEWOOD,

Defendants, And

JOSEPH MARSON, DOUGLAS BAKER, CHARLES MURPHY, ROBERT ADAIR, SANDRA GREENBERG, KENNEDY SHAW, AND JACK DRAKEFORD,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Respondents disagree with the question as phrased by the Petitioner. The question which the trial court certified to the U.S. Court of Appeals for the Third Circuit pursuant to 28 *U.S.C.* 1292(b) was "whether N.J. Stat. Ann. Section 2A:14-1 or Section 2A:14-2 should apply to Section 1983 actions and Section 1985 actions in New Jersey in light of *Owens v. Okure,* 109 S.Ct. 573 (1989)."

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STATEMENT OF THE CASE

The facts of the case are stated fully in the decisions of the Third Circuit (Petitioner's App. 1 to 10) and the District Court (Petitioner's App. 18 to 32 and App. 69 to 82).

SUMMARY OF ARGUMENT

The decision of this Court in *Owens v. Okure*, 109 S.Ct. 573 (1989) did not change the holding in *Wilson v. Garcia*, 471 U.S. 261 (1985) that a state's "personal injury" statute should apply to section 1983 claims. *Wilson, supra*, at 271. Thus, the Third Circuit in this case had no reason to reverse three reported decisions which hold that New Jersey's two-year statute of limitations applies to Section 1983 actions. Moreover, the petition should not be granted as the Third Circuit did not err in its holding that claims under 42 *U.S.C.* Sections 1983 and 1985 arising in New Jersey are governed by New Jersey's two-year personal injury statute of limitations, N.J. Stat. Ann. 2A:14-2. Finally, this Court traditionally has not exercised its discretion in granting certiorari to review perceived conflicts between state and federal law, but rather only to review actual conflicts. As the Third Circuit decisions do not conflict with any New Jersey State Court decision, the petition should be denied.

LEGAL ARGUMENT

POINT I

CERTIORARI SHOULD BE DENIED AS THE THIRD CIRCUIT'S DECISION IS CONSISTENT WITH THIS COURT'S PRIOR RULINGS AND NEW JERSEY STATE COURT PRECEDENT

The decision of this Court in *Owens v. Okure*, 109 S.Ct. 573 (1989) was intended to clarify the Court's holding in *Wilson v. Garcia*, 471 U.S. 261 (1985), not change it. In *Wilson*, this Court analyzed 42 U.S.C. §§ 1983 and 1988 in order to determine the appropriate limitations period for section 1983 claims. This Court first perceived that the characterization of section 1983 claims was to be made by federal, not state, standards. 471 *U.S.* at 270. Second, this Court examined the intent of Congress in 1871 when section 1983 was passed, as well as the "admonition" of section 1988, *id.* at 275, and concluded that Congress favored a "simple approach" of selecting "the one most appropriate statute of limitations for all section 1983 claims." *Id.* Third, in evaluating the ways that Congress sought to redress constitutional violations of the Civil Rights Act, this Court determined that the fundamental characteristic of a section 1983 claim was "more analogous to tort claims for personal injury than, for example, to claims for damages to property of breach of contract." *Id.* at 277. Finally, this Court noted that "[t]he relative scarcity of statutory claims when section 1983 was enacted makes it unlikely that Congress would have intended to apply the catchall periods of limitations for statutory claims that were later enacted by many states." *Id.* at 278. Thus, this Court in *Wilson* concluded that a

state's "personal injury" statute should apply to all section 1983 claims. *Id.* at 279. Significantly in *Wilson*, this Court applied New Mexico's three-year statute of limitations which governs actions "for an injury to the person or reputation of any person." *Id.* By so holding, this Court rejected application of New Mexico's four-year residual statute of limitations which governs "all other actions not herein otherwise provided for." *Id.* at 271.

In *Owens*, this Court unanimously held that where state law provides multiple statutes of limitations for particular personal injury actions, a court considering a section 1983 claim "should borrow the *general* or *residual* statute for personal injury actions." *Id.* at 582 (emphasis added). As phrased by Justice Marshall, the issue in *Owens* was "the question of what limitations period should apply to a section 1983 action where a state has one or more statutes of limitations for certain enumerated intentional torts, and a residual statute for all other personal injury actions." *Id.* at 574. In New Jersey, there exists only one personal injury statute of limitations that applies to both unintentional and intentional acts, as long as these acts result in "injury to the person": N.J. Stat. Ann. 2A:14-2. Indeed, the courts of New Jersey have consistently interpreted N.J. Stat. Ann. 2A:14-2 as the state's general personal injury statute. *See, e.g. O'Connor v. Altas*, 67 N.J. 106, 113, 335 A.2d 545, 548 (1975) (Section 2A:14-2 is New Jersey's "personal injury" statute of limitations); *Port Authority of New York and New Jersey v. Ingram*, 232 N.J. Super. 401, 404-405, 557 A.2d 337, 338 (App. Div. 1989) (same); *Healey v. Township of Dover*, 208 N.J. Super. 679, 682, 506 A.2d 824, 826 (App. Div. 1986); *Mancuso v. Mancuso*, 209 N.J. Super. 51, 54-55, 506 A.2d

1253, 1255 (App. Div. 1986); *Spring Motors Distributors, Inc. v. Ford Motor Co.*, 191 N.J. Super. 22, 37, 465 A.2d 530, 538 (App. Div. 1983), *rev'd on other grounds*, 98 N.J. 555, 489 A.2d 660 (1985); *Wayne Township Board of Education v. Strand Century, Inc.*, 172 N.J. Super. 296, 302, 411 A.2d 1161, 1163 (App. Div. 1980). Thus, the holding in *Owens* has no relevancy to New Jersey. As aptly stated by this Court, "[i]n states where one statute of limitations applies to all personal injury claims, *Wilson* supplies a clear answer." *Owens v. Okure, supra*, 109 S.Ct. at 577.

Significantly, two pre-*Owens* Third Circuit decisions, *Brown v. Foley*, 810 F.2d 55 (3d Cir. 1987) and *Napier v. Thirty or More Unidentified Federal Agents, Employees or Officers*, 855 F.2d 1080 (3d Cir. 1988), established New Jersey's two-year statute as the appropriate one for section 1983 actions in New Jersey. In *Brown* and *Napier*, the Third Circuit was not troubled by any perceived ambiguity in *Wilson* as applied to New Jersey; the Court reached its decision without hesitation. After *Owens*, the Third Circuit has also not been troubled by this issue. *Cito v. Bridgewater Twp. Police Dept.*, 892 F.2d 23 (3d Cir. 1989) (New Jersey's two-year statute applies to section 1983 claims).

Further, the Third Circuit's treatment of the appropriate statute of limitations for section 1983 actions in Pennsylvania is instructive because Pennsylvania's statutory scheme is analogous to its sister state, New Jersey. Pennsylvania's two-year statute of limitations now governs Section 1983 actions. In particular, this Court is *Springfield Township School District v. Knoll*, 471 U.S. 288 (1985) (per curiam) vacated the Third Circuit's initial judgment that Pennsylvania's six-year residuary statute of limitations

applied to the particular section 1983 claim at issue, 699 F.2d 137, 139 (3d Cir. 1983), and remanded the matter for reconsideration in light of *Wilson*. This Court in *Knoll* determined that *Wilson* "held that all section 1983 claims should be characterized for statute of limitation purposes as actions to recover damages for injuries to the person." 471 *U.S.* at 289. On remand, the Third Circuit adopted Pennsylvania's two-year personal injury statute as the appropriate limitations provision in section 1983 actions. *Knoll v. Springfield Township School District*, 763 F.2d 584 (3d Cir. 1985). In so doing, the Third Circuit rejected application of Pennsylvania's residual six-year statute as the appropriate one under *Wilson*. *See* 42 *Pa.* C.S.A. Sec. 5527. The Third Circuit's conclusion in *Knoll* was upheld by this Court in *Goodman v. Lukens Steel Co.*, 482 *U.S.* 656 (1987) and *Al-Khazaji v. St. Francis College*, 481 *U.S.* 604, *reh. denied*, 483 *U.S.* 1011 (1987).

Lastly, in keeping with Sup. Ct. R. 10.1 that a petition for a writ of certiorari will be granted "only when there are special and important reasons therefor", the petition should be denied. While petitioner perceives a "conflict" between the Third Circuit and state court decisions even though there exists no reported New Jersey state court opinion applying *Wilson*, review by this Court has traditionally been reserved for actual existing conflicts. *Cf. Brown v. Hotel & Restaurant Employers & Bartenders*, 468 *U.S.* 491, 512 (1984). (this Court declined to decide the constitutionality of a section of the New Jersey Casino Control Act because the Casino Control Commission had never applied the statute and therefore there was "no concrete application of state law"). Moreover, petitioner's prediction that the Third Circuit's decision will cause a

split of authority between state and federal court systems in New Jersey is legally impossible. A general rule of law in New Jersey is that state courts will follow the Third Circuit's interpretation of 42 U.S.C. 1988, applying the two-year statute of limitations to section 1983 actions, since New Jersey's courts are bound by federal court decisions interpreting a federal statute unless the federal decisions, themselves, are in conflict. *Southern Pacific Co. v. Wheaton Brass Works*, 5 *N.J.* 594, 603, 76 A.2d 890, 895 (1950), *cert. den.* 341 *U.S.* 904 (1951); *Urban League of Greater New Brunswick v. Borough of Carteret*, 170 *N.J. Super.* 461, 469, 406 A.2d 1322, 1325 (App. Div. 1979), *rev'd on other grounds*, 92 *N.J.* 158, 456 A.2d 390 (1983). Here, the three reported Third Circuit decisions and the unreported opinion in this case uniformly apply a two-year statute of limitation to section 1983 actions arising in new Jersey. These decisions bind the New Jersey state courts. Thus, the "special and important reasons" required by Sup. Ct. R. 10.1 for granting a petition for a writ of certiorari do not exist, and the petition should be denied.

CONCLUSION

For the foregoing reasons and authorities cited, the petition should be denied.

Respectfully submitted,

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